Cause No. D-1-GN-19-000956

SYNERGIES CORPORATION, NIRAV MODI, INC., FIRESTAR DIAMOND INTERNATIONAL, INC., AVD TRADING, INC. and FIRESTAR GROUP, INC.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
vs.	§	
MORRISON FOERSTER, LLP,	§	
Defendants.	§	459th JUDICIAL DISTRICT

DEFENDANT MORRISON & FOERSTER LLP'S SPECIAL APPEARANCE AND, SUBJECT THERETO, MOTION TO DISMISS FOR FORUM NON CONVENIENS

Pursuant to Texas Rule of Civil Procedure 120a, Defendant Morrison & Foerster LLP ("MoFo") makes this special appearance for the purpose of objecting to the jurisdiction of this Court over it. Subject to and without waiving its special appearance, MoFo moves to dismiss this action for forum non conveniens.

SPECIAL APPEARANCE

MoFo enters this special appearance on the ground that it is not subject to personal jurisdiction in Texas. Plaintiffs' Original Petition lacks factual allegations regarding any contact MoFo has had with the State of Texas, and MoFo does not have sufficient contacts establishing a substantial connection to this forum. The Court should sustain MoFo's special appearance and dismiss the Petition for want of jurisdiction. This special appearance is made by MoFo to the entire proceeding and is filed in due order before any motion to transfer venue, or any other plea, pleading, or motion.

I. JURISDICTIONAL FACTS

This case arises out of Plaintiffs' engagement of MoFo to perform legal services. Plaintiffs allege that MoFo committed "egregious overbilling." Pet. at 1.

A. Plaintiffs

Plaintiffs are direct or indirect subsidiaries of Hong Kong-based Firestar Holdings Limited, a subsidiary of India-based Firestar International Limited. Verification and Affidavit of Jeffery Bell (Ex. 1) ¶ 11 & Ex. M. Firestar International's founder, Nirav Modi, has been accused by Punjab National Bank, a state-owned Indian banking and financial services company, of perpetrating a $1.8 billion fraud. *See* Sriram Iyer, *Nirav Modi, accused of swindling $1.8 billion, was with Narendra Modi at Davos*, Quartz India (Feb. 15, 2018), https://qz.com/india/1208133/punjab-national-bank-fraud-nirav-modi-accused-of-swindling-1-8-billion-was-with-narendra-modi-at-davos-just-weeks-ago/ (last visited March 26, 2019). After being a fugitive for some time, Modi was recently arrested in the United Kingdom. *See Nirav Modi arrested in UK amid India fraud case allegations*, BBC (March 20, 2019), https://www.bbc.com/news/world-asia-india-47621519 (last visited March 26, 2019).

Plaintiffs are Delaware corporations. Pet. at 2. They allege that their principal places of business are, and "at all relevant times" were, in Texas. *Id.* Publicly available information suggests, however, that these allegations are false. None of Plaintiffs are registered with the Texas Secretary of State or the Texas Comptroller. Affidavit of Jane Whittlesey (Ex. 2) ¶¶ 2–3 & Exs. N–V. Nor do they have a registered agent in Texas. *Id.* ¶ 2 & Exs. N–R. Instead, at least four of the five Plaintiffs are registered with the New York Department of State. *Id.* ¶ 4 & Exs. W–AA. Of those four, three (Synergies Corporation, Nirav Modi, Inc., and Firestar Diamond International, Inc.) have their principal executive office in New York, and the fourth (AVD Trading, Inc.) lists a

New York address as its Department of State service of process address. *Id.* The principal place of business of the fifth Plaintiff, Firestar Group, Inc., is unknown.

B. MoFo

"MoFo is a California limited liability partnership, with its principal place of business in the State of California." Pet. at 2. MoFo does not have an office in Texas. Ex. 1 ¶ 7. And it "has not designated a registered agent for service in this state." Pet. at 2.

C. MoFo's Work for Plaintiffs

Plaintiffs and MoFo's relationship began when Nirav Modi's stepbrother, Nehal Modi, approached Jeffery Bell, a partner in MoFo's New York office, and inquired whether MoFo would perform certain legal services for Plaintiffs. Ex. 1 ¶ 12. After Bell met with Modi in New York, Plaintiffs engaged MoFo as of May 30, 2018. *Id.* ¶¶ 12–13 & Ex. A. MoFo's engagement letter was on the letterhead for MoFo's New York office and stated that the scope of the engagement was for MoFo to liquidate Plaintiffs and represent them in any claims they or their affiliates may have in certain bankruptcy cases pending in New York. *Id.* ¶ 13.

One of MoFo's first tasks was to prepare resolutions replacing Plaintiffs' existing directors and officers with a new director and officer, Rochelle Miller. Ex. 1 ¶ 15 & Exs. B–L. Anthony Allicock, the sole director of Plaintiffs when Plaintiffs engaged MoFo, executed Miller's election as Plaintiffs' sole director and CEO on June 1 and 2, 2018. *Id.* Allicock works in New York, and all of MoFo's meetings with him occurred in New York. *Id.*

Over the next three months, MoFo performed a variety of legal services for Plaintiffs, including negotiating with and obtaining funds from entities in Florida, Hawaii, Nevada, and New York; responding to discovery requests served on Plaintiffs in connection with the bankruptcy cases in New York; and responding to a lawsuit filed against one of the Plaintiffs in New York.

Ex. 1 ¶ 16. All of the MoFo partners and associates who performed work on Plaintiffs' behalf were licensed in New York and not in Texas and were based in MoFo's New York office and not in Texas, with the exception of one Hong Kong-based attorney and another attorney who relocated from MoFo's New York office to its Tokyo location near the end of MoFo's representation of Plaintiffs. *Id.* ¶ 14. No MoFo attorney traveled to Texas as part of the engagement. *Id.* ¶ 17. None of their work involved assets in Texas. *Id.* ¶ 18. And none of them made appearances in any cases filed in Texas. *Id.* ¶ 19.

II. LEGAL STANDARD

Texas's long-arm statute authorizes the exercise of personal jurisdiction to the full extent permitted by the Due Process Clause of the United States Constitution. TEX. CIV. PRAC. & REM. CODE ANN. §§ 17.041–.045; *BMC Software Belg., N.V. v. Marchland*, 83 S.W.3d 789, 795 (Tex. 2002). Due process permits a court to exercise jurisdiction over a defendant if (1) the defendant purposefully availed itself of the benefits and protections of the forum state by establishing minimum contacts with the state; and (2) the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 657–58 (Tex. 2010).

A. For a court to exercise jurisdiction over a defendant, the defendant must have purposefully availed itself of the benefits and protections of the forum state by establishing minimum contacts.

To confer jurisdiction over it, a defendant must make purposeful minimum contacts with the forum state. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005). A defendant's contacts with a forum confer jurisdiction when either (1) the contacts are continuous and systematic, giving rise to general jurisdiction, or (2) the cause of action arises out of or relates

to the contacts, giving rise to specific jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 416–18 (1984); *BMC Software Belg., N.V.*, 83 S.W.3d at 795.

Under the general jurisdiction analysis, a defendant must have "continuous" and "systematic" contacts with the forum. *Helicopteros*, 466 U.S. at 414. The general jurisdiction standard is "difficult to meet," and requires contacts that are "extensive." *Submersible Sys., Inc. v. Perforadora Cent., S.A. de C.V.*, 249 F.3d 413, 419 (5th Cir. 2001). Recently, the Supreme Court of the United States heightened this standard by holding that to be subject to general jurisdiction, a defendant's connection to the forum must be so substantial that it is "essentially at home in the forum." *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014).

For specific jurisdiction, there must be a sufficient nexus between the claim for liability and the defendant's contacts with the forum state. *M&F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 887–90 (Tex. 2017). To be sufficient, the nexus must amount to a substantial connection with the forum. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007). And the defendant's contacts with the forum must constitute purposeful availment, by which the defendant took advantage of the privilege of conducting activities within the forum, thus invoking the benefits and protections of its laws. *J. McIntyre Mach. Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011).

Under both the general and specific jurisdiction analyses, the defendant must have created a substantial relationship with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–76 (1985). The unilateral activities of the plaintiff or another party are insufficient to confer jurisdiction over a defendant. *M&F Worldwide Corp.*, 512 S.W.3d at 889.

B. For a court to exercise jurisdiction over a defendant, the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice.

Even if minimum contacts exist, a court cannot exercise jurisdiction over a defendant if the exercise of jurisdiction would offend traditional notions of fair play and substantial justice. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 154–56 (Tex. 2013). To ensure jurisdiction does not offend due process, courts consider the following factors:

1. the burden on the nonresident to litigate in a distant forum;
2. the forum state's interest in adjudicating the dispute;
3. the plaintiff's interest in obtaining convenient and effective relief;
4. the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
5. the shared interest of the several states in furthering fundamental substantive social policies.

Asahi Metal Indus. Co. v. Super. Ct. of Cal., 480 U.S. 102, 113 (1987); *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991).

Courts also examine the foreseeability of litigation in the forum. *BMC Software Belg., N.V.*, 83 S.W.3d at 795. The foreseeability analysis centers on whether any contacts by the defendant with the forum made the defendant reasonably anticipate being haled into court in the forum. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The foreseeability requirement protects a defendant from being haled into court when its relationship with the forum is too attenuated to support jurisdiction. *Am. Type Culture Collection v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002), *cert. denied*, 537 U.S. 1191 (2003).

C. A plaintiff bears the burden of pleading sufficient allegations to confer jurisdiction.

A plaintiff has the initial burden to plead sufficient allegations to confer jurisdiction. *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex. 2009). Once the

plaintiff has done so, the burden shifts to the defendant to negate all potential bases for jurisdiction pleaded by the plaintiff. *Id.* However, "[i]f the plaintiff fails to plead facts bringing the defendant within the reach of the long-arm statute (i.e., for a tort claim, that the defendant committed tortious acts in Texas), the defendant need only prove that it does not live in Texas to negate jurisdiction." *Kelly*, 301 S.W.3d at 658–59.

III. ARGUMENT

A. MoFo does not have contacts with Texas that bring it within the Texas long-arm statute.

As explained, a plaintiff bears the initial burden of pleading allegations sufficient to bring a nonresident defendant within the provisions of Texas's long-arm statute. *Retamco Operating*, 278 S.W.3d at 337; *see also Perna v. Hogan*, 162 S.W.3d 648, 652–53 (Tex. App.—Houston [14th Dist.] 2005, no. pet.) (reversing trial court's denial of defendant's special appearance where plaintiffs failed to make sufficient jurisdictional allegations in their petition and defendants demonstrated they were not residents of Texas). Texas's long-arm statute provides that in addition to other acts that may constitute doing business in Texas, a nonresident does business in the state if it "(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in [Texas]; (2) commits a tort in whole or in part in [Texas]; or (3) recruits Texas residents, directly or through an intermediary located in [Texas], for employment inside or outside [Texas]." TEX. CIV. PRAC. & REM. CODE ANN. § 17.042. "If the plaintiff does not plead jurisdictional allegations, *i.e.*, that the defendant has committed any act in Texas, the defendant can satisfy its burden of negating all bases of personal jurisdiction by presenting evidence that it is a nonresident at the special appearance hearing." *Perna*, 162 S.W.3d at 653.

Plaintiffs' jurisdictional allegations regarding MoFo's contacts with Texas are insufficient to bring MoFo within the reach of Texas's long-arm statute. Plaintiffs fail to allege any jurisdictional facts on which the Court could conclude that MoFo does business in Texas. Instead, Plaintiffs merely state, in conclusory fashion, that MoFo does "extensive business" in Texas. Pet. at 2, 3. Nowhere in the Petition do Plaintiffs allege any facts to support this allegation. *See Panda Brandy Wine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 869 (5th Cir. 2001) (the court need not credit conclusory allegations, even if uncontroverted). Plaintiffs do not allege that MoFo contracted with a Texas resident and either party was to perform the contract in whole or in part in Texas; committed a tort in whole or in part in Texas; or recruited Texas residents for employment. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (defining these actions as "doing business" in Texas). The Petition is completely void of any specific factual allegation regarding MoFo's contacts with Texas. Plaintiffs thus fail to meet their initial burden of pleading facts sufficient to bring MoFo within the provisions of the Texas long-arm statute. *See Wolf v. Summers-Wood, L.P.*, 214 S.W.3d 783, 793 (Tex. App.—Dallas 2007, no pet.) (dismissing case for lack of jurisdiction where plaintiffs failed to meet their burden of alleging sufficient facts and defendants demonstrated they were not residents of Texas).

MoFo, on the other hand, has presented evidence that it is a nonresident. MoFo has presented evidence showing that it is a California limited liability partnership with its principal place of business in California and no offices or partners residing in Texas. Ex. 1 ¶¶ 3–4, 7. This evidence satisfies MoFo's burden of negating jurisdiction. *See Perna*, 162 S.W.3d at 653.

B. MoFo does not have continuous and systematic contacts with Texas that subject it to general personal jurisdiction in this forum.

In addition to failing to meet their initial burden of pleading facts sufficient to bring MoFo within the provisions of the Texas long-arm statute, Plaintiffs fail to plead the minimum contacts

between MoFo and Texas needed to satisfy the due process analysis. First, Plaintiffs fail to allege any jurisdictional facts on which the Court could conclude that MoFo has sufficient minimum contacts with Texas to subject it to general jurisdiction here. Plaintiffs admit that MoFo is a California limited liability partnership with its principal place of business in California. Pet. at 2. Plaintiffs further admit that MoFo does not maintain a registered agent for service of process in Texas. *Id.* MoFo has offices across the nation, but none of them are in Texas. Ex. 1 ¶ 7. Nor does MoFo have a Texas bank account or a Texas mailing address. *Id.* ¶ 7–8. Despite Plaintiffs' conclusory allegation that MoFo does "extensive business" in Texas, Pet. at 2–3, MoFo does not have a substantial "business presence in Texas" as required under general jurisdiction principles. *Companion Prop. & Cas. Ins. Co. v. Palermo*, No. 3:11-CV-03524-F, 2012 WL 12882078, at *6 (N.D. Tex. Nov. 19, 2012), *aff'd*, 723 F.3d 557, 560 (5th Cir. 2013).

Cases applying general jurisdiction principles to law firms show that MoFo is not subject to general jurisdiction in Texas. For example, in *Palermo*, the court held that a law firm was not subject to general personal jurisdiction in Texas where the firm employed nine attorneys that were licensed to practice in Texas but had no agent for service of process in Texas, no office or mailing address in Texas, and no agent or employees located in Texas. *Id.* at *6; *see also Aladdin Beauty Colleges, Inc. v. Ritzert & Leyton, P.C.*, No. 3:99-CV-2913, 2000 WL 217882, at *1–*2 (N.D. Tex. Feb. 23, 2000) (the unilateral activity of a plaintiff cannot subject an out-of-state law firm to Texas jurisdiction where the firm has no offices, agents, employees, cases, taxes, bank accounts, phone numbers, or post office boxes in Texas); *Gray, Ritter, & Graham, PC v. Goldman Phipps PLLC*, 511 S.W.3d 639, 657 (Tex. App.—Corpus Christi 2015, pet. denied) ("[A] nonresident attorney who has only sporadic contacts with Texas will not normally be subject to general jurisdiction in Texas.").

MoFo's sporadic contacts with Texas are a far cry from the continuous and systematic contacts necessary to make MoFo "essentially at home" in Texas. *Daimler AG*, 571 U.S. at 138.

C. The Court lacks specific jurisdiction over MoFo because none of the facts forming the basis for this lawsuit occurred in Texas.

Plaintiffs also fail to allege any jurisdictional facts on which the Court could conclude that MoFo has sufficient minimum contacts with Texas to subject it to specific jurisdiction in Texas in this case. None of the facts on which Plaintiffs base their claims are alleged to have occurred in Texas. Plaintiffs ignore and fail to inform the Court that, with two irrelevant exceptions, all of the work for Plaintiffs performed by MoFo partners and associates was performed by New York-licensed attorneys based in MoFo's New York office. Ex. 1 ¶ 14. The only legal services even remotely connected to jurisdictions other than New York were associated with Plaintiffs' assets in Florida, Hawaii, and Nevada. Pet. at 6–8; Ex. 1 ¶ 16.

Plaintiffs, which are Delaware corporations apparently based in New York, sought out New York counsel, in New York, to represent them in connection with cases filed in New York and related matters. Ex. 1 ¶¶ 12–13; Ex. 2 ¶ 4 & Exs. W–AA. The engagement letter establishing the attorney-client relationship and scope of representation was on the letterhead for MoFo's New York office and drafted and signed by a MoFo lawyer in New York. Ex. 1 ¶ 13 & Ex. A. All in-person meetings between representatives of MoFo and Plaintiffs occurred in New York. *Id.* ¶ 17, 20. MoFo lawyers never expected to travel to Texas in connection with MoFo's representation of Plaintiffs and never visited Texas at any point for purposes of the representation. *Id.* ¶ 17.

The only connection between this case and Texas is that Plaintiffs' sole director and officer, Rochelle Miller, apparently resides here.[1] As explained, Plaintiffs elected Miller as their director

[1] MoFo assumes, but does not admit, that Miller is still Plaintiffs' sole director and officer.

and CEO ***after*** they engaged MoFo. *Id.* ¶ 15 & Exs. B–L. Miller traveled to New York on multiple occasions for in-person meetings with MoFo, and all other MoFo communications with her occurred via telephone or email. *Id.* ¶ 20. Thus, the sole connection between this case and Texas is Plaintiffs' unilateral decision, after engaging MoFo, to elect a director and CEO who resides in Texas. It is well established that this type of action, taken solely by Plaintiffs, cannot establish sufficient minimum contacts between MoFo and Texas: "[T]he plaintiff cannot be the only link between the defendant and the forum.… [A] defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Bates Energy Oil & Gas v. Complete Oilfield Servs.*, No. SA-17-CV-808-XR, 2019 WL 189012, at *6 (W.D. Tex. Jan. 14, 2019); *see also World-Wide Volkswagen Corp.*, 444 U.S. at 298 (plaintiff's unilateral contact with the forum cannot establish jurisdiction where the defendant did not make purposeful, deliberate contacts with the forum).

Even assuming the unestablished fact that Miller was in Texas when she received some communications from MoFo, such an attenuated connection with Texas does not establish sufficient minimum contacts, either. A similar claim was made in *Palermo*, where a client of a nonresident law firm had an arrangement that a Texas entity would receive communications and billings from the nonresident firm. 2012 WL 12882078, at *5. The court rejected the claim and held that the unilateral action of the client to have a Texas resident as its contact person could not be used by the client to establish personal jurisdiction over the firm in Texas. *Id.*; *see also Stangel v. Johnson & Madigan PLLP*, No. 00-10038, 2000 WL 1056294, at *1 (5th Cir. July 27, 2000) (the mere communication of billing matters regarding a case or work undertaken elsewhere is insufficient to support personal jurisdiction).

A similar jurisdiction argument was also rejected in *Bergenholtz v. Cannata*, 200 S.W.3d 287, 295 (Tex. App.—Dallas 2006, no pet.). The plaintiff companies' CEO resided in Texas, where he received advice, conferred via email and telephone, signed an engagement letter, and received and sent payment to California counsel related to California litigation involving the CEO's Canadian companies. *Id.* at 291. Counsel entered a special appearance and filed affidavits swearing that the two attorneys in the litigation were California residents, had never maintained business offices in Texas, were licensed to practice in California and not in Texas, were located in California when communicating with plaintiffs and rendering legal services, and had never traveled to Texas in connection with their representation of plaintiffs. *Id.* at 291–92. The claims asserted were nearly identical to the claims asserted against MoFo here: breach of fiduciary duty, negligence, and misrepresentation. *Id.* at 295–97. The court of appeals affirmed the trial court's dismissal of the case, stating that there was no evidence that the California attorneys purposefully availed themselves of the privilege of conducting business in Texas. *Id*. Like the CEO in *Bergenholtz*, Miller's presence in Texas fails to confer jurisdiction over MoFo.

The facts of this lawsuit can be readily distinguished from cases in which Texas courts have exercised jurisdiction over nonresident law firms. For example, in *Trinity Industries, Inc. v. Myers & Associates, Ltd.*, the Fifth Circuit held that jurisdiction was proper over a nonresident law firm that represented a Texas company for eight years, regularly mailed documents to Texas, sent all bills to Texas, received payment from a Texas source, communicated via phone with executives in Texas, attended in-person meetings in Texas, and represented the company *pro hac vice* in a matter in Texas court. 41 F.3d 229, 231 (5th Cir. 1995); *see also Streber v. Hunter*, 221 F.3d 701, 718–19 (5th Cir. 2000) (Louisiana attorney was subject to jurisdiction in Texas for a malpractice claim related to advice given to Texas clients on several occasions, including during a mediation

in Texas); *Nawracaj v. Genesys Software Sys.*, 524 S.W.3d 746, 754–56 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (defendant's *pro hac vice* admission to represent a party in Texas and preparation of documents to file in Texas court constituted purposeful availment of Texas as a forum). Unlike the nonresident law firms in these cases, no one from MoFo ever stepped foot in Texas or appeared in a Texas court in connection with MoFo's representation of Plaintiffs. *See First Metro. Church of Houston v. Genesis Grp.*, 616 F. App'x 148, 149 (5th Cir. 2015) (nonresident financial company was not subject to jurisdiction in Texas simply because it entered into a contract with a Texas resident where the scope of the contract did not involve work in Texas).

All of Plaintiffs' claims relate to MoFo's work for Plaintiffs, which undisputedly was based out of MoFo's New York office. Plaintiffs do not establish a sufficient nexus between purposeful contacts with Texas made by MoFo and the facts forming the bases of Plaintiffs' claims. The Court lacks specific personal jurisdiction over MoFo.

D. Exercising jurisdiction over MoFo in Texas would offend the notions of fair play and substantial justice.

The Court should also refuse to exercise jurisdiction over MoFo because haling MoFo to Texas court would offend the notions of fair play and substantial justice. All of the relevant factors in evaluating the due process concerns of fair play and substantial justice support concluding that exercising jurisdiction over MoFo in Texas would violate due process.

First Factor. Exercising jurisdiction over a defendant violates due process where the defendant has little connection to the forum state and would be burdened by traveling to the distant forum. *See Wilson v. Belin*, 20 F.3d 644, 651 (5th Cir. 1994) (exercising jurisdiction over Indiana and Iowa defendants violated due process given the defendants' minimal connections with Texas and the burden on them of litigating in a distant forum); *Smirch v. Allied Shipyard, Inc.*, 164 F. Supp. 2d 903, 911–12 (S.D. Tex. 2001) (exercising jurisdiction violated due process where Texas's

interest in the underlying dispute was outweighed by the fact that the alleged breach of contract and misrepresentation occurred in Louisiana and the vast majority of persons with knowledge of facts and evidence resided in Louisiana). The burden on MoFo to litigate in Texas would be substantial. MoFo has avoided having a continuous and systematic business presence in Texas. It would be a substantial burden to ask MoFo to bring its team that represented Plaintiffs, along with all its supporting evidence, to Texas for any trial. Ex. 1 ¶ 21.

Second Factor. Texas has no interest in adjudicating this dispute. *See Asahi Metal*, 480 U.S. at 113 (listing factors to consider in deciding whether the exercise of jurisdiction would offend traditional notions of fair play and substantial justice). This dispute concerns the engagement of largely New York-licensed lawyers, to perform work largely out of a New York office, in connection with cases filed in New York and related matters. MoFo's work did not concern any property in Texas or require any travel to Texas. New York—not Texas—has an interest in resolving disputes related to any alleged misconduct of its attorneys. *See Kimko Int'l, Inc. v. Tien*, No. 3:96-CV-0978-R, 1999 WL 261879, at *2 (Tex. App.—Dallas April 21, 1999, no pet.) (declining to exercise jurisdiction because California, not Texas, had an interest in adjudicating malpractice and negligence claims against its attorneys); *cf. Clark v. Kick*, 79 F. Supp. 2d 747, 752 (S.D. Tex. 2000) (Texas has a strong interest in adjudicating a dispute when it involves Texas attorneys and Texas property).

Third Factor. Plaintiffs' interest in obtaining convenient and effective relief is not dependent upon this case being in Texas. *See Asahi Metal*, 480 U.S. at 113. At least four of the Plaintiffs apparently are based in New York, Ex. 2 ¶ 4 & Exs. W–AA, and almost all the evidence they would need to attempt to prove their claims is in New York. Miller is the only representative

of Plaintiffs with relevant knowledge who resides in Texas, and her past actions demonstrate that traveling to New York is hardly an inconvenience. *See* Ex. 1 ¶ 20.

Fourth Factor. The interstate judicial system's interest in obtaining the most efficient resolution of controversies also weighs in favor of concluding that exercising jurisdiction over MoFo in Texas would offend the notions of fair play and substantial justice. *See Asahi Metal*, 480 U.S. at 113. None of the facts underlying this case occurred in Texas. Most or all of the relevant documents are in New York, and the vast majority of witnesses are in New York. Almost all of the MoFo lawyers who performed the services at issue are based in MoFo's New York office. Ex. 1 ¶ 14. Only one witness, Miller, resides in Texas.

Fifth Factor. The shared interest of the several states in furthering fundamental substantive social policies does not weigh in favor of exercising jurisdiction over MoFo in Texas. *See Asahi Metal*, 480 U.S. at 113. Plaintiffs assert common law claims, which are common to both Texas and New York.

As a final consideration, the foreseeability of MoFo having to litigate this case in Texas further tips the scales in favor of holding that exercising jurisdiction over MoFo would offend the notions of fair play and substantial justice. *See World-Wide Volkswagen*, 444 U.S. at 297 (describing the foreseeability analysis). In agreeing to represent five entities, at least four of which are based in New York, in cases filed in New York and related matters, with largely New York-licensed lawyers, it was never foreseeable that MoFo would have to take any action in Texas, much less have to come to Texas to defend a lawsuit. Ex. 1 ¶¶ 12–14, 16, 22. MoFo's reasonable belief that it would not be haled into court in Texas protects it from the jurisdiction of Texas courts based on due process considerations.

IV. CONCLUSION

MoFo is not subject to either general or specific jurisdiction in Texas, and exercising jurisdiction over MoFo in Texas would offend notions of fair play and substantial justice. MoFo respectfully requests that the Court set this special appearance for hearing and, following the hearing, sustain the special appearance and dismiss all of Plaintiffs' claims for lack of personal jurisdiction.

MOTION TO DISMISS FOR FORUM NON CONVENIENS

Subject to MoFo's special appearance and without waiving its personal jurisdiction challenge under the due-order-of-pleading requirement of Rule 120a, MoFo moves to dismiss the Petition for forum non conveniens.

I. LEGAL STANDARD

Forum non conveniens is an equitable common law doctrine exercised by Texas courts to prevent the imposition of an inconvenient jurisdiction on a litigant. *Gottwald v. de Cano*, No. 08-16-00044-CV, 2018 WL 3407719, at *3 (Tex. App.—El Paso July 13, 2018, no pet.). The central focus of the forum non conveniens inquiry is convenience. *Quixtar Inc. v. Signature Mgmt. Team, LLC*, 315 S.W.3d 28, 33 (Tex. 2010). As a threshold question, there must be an available and adequate alternative forum. *Gottwald*, 2018 WL 3407719, at *6. If there is, Texas courts consider the *Gulf Oil* factors, which include both private and public concerns, in determining whether to dismiss for forum non conveniens. *Id.* (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508–09 (1947)).

The private interest factors include:

1. the relative ease of access to sources of proof;
2. the availability of compulsory process for attendance of unwilling witnesses, and the cost of obtaining such attendance;
3. the possibility of view of premises, if view would be appropriate to the action;

4. the enforceability of a judgment once obtained; and

5. all other practical problems that make trial of a case easy, expeditious, and inexpensive.

Id.

The public interest factors include:

1. administrative difficulties for courts when litigation is piled up in congested centers instead of being handled at its origin;

2. the burden of jury duty that ought not to be imposed upon the people of a community that has no relation to the litigation;

3. local interest in having localized controversies decided at home; and

4. avoiding conflicts of law issues.

Id. Central emphasis should not be placed on any one factor. *Id.* at 34.

A nonresident plaintiff's choice of forum enjoys "substantially less deference" than it would if the plaintiff were a resident of Texas. *Id.* at 33. A defendant's burden of proof is less stringent when a plaintiff is not a Texas resident. *Id.*

II. ARGUMENT

A. New York provides an adequate alternate forum to hear this case.

New York is an alternate forum where this action can and should be heard. An alternate forum is one where the defendant is amenable to process. *In re Gen. Elec. Co.*, 271 S.W.3d 681, 688 (Tex. 2008). Because MoFo has an office in New York and the facts underlying this action occurred in New York, MoFo would be amenable to process in New York should Plaintiffs choose to refile their action there.

A New York forum can provide an adequate remedy for Plaintiffs' claims. A forum is "adequate" if the parties will not be deprived of all remedies or treated unfairly. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 (1981). No such deprivation or treatment would occur by requiring Plaintiffs to litigate their claims in New York. A forum is inadequate only if "the

remedies it offers are so unsatisfactory they really comprise no remedy at all." *In re ENSCO Offshore Int'l Co.*, 311 S.W.3d 921, 924 (Tex. 2010). Claims like Plaintiffs are litigated regularly in New York. Thus, New York is an adequate alternate forum.

B. Both private and public interest factors render this action more properly heard in New York.

Consideration of the *Gulf Oil* factors demonstrates that dismissal for forum non conveniens is appropriate.

Private Interest Factors. As to the first private interest factor, New York is a more convenient forum because most of the sources of proof are in New York—not Texas. As explained, none of the facts underlying this case occurred in Texas; most or all of the relevant documents are in New York; and the vast majority of witnesses are in New York. As to the second factor, witnesses in New York, where MoFo performed the vast majority of its work, could not be compelled to testify in Texas. Because there are no premises that would need to be viewed, the third factor is neutral. As to the fourth factor, a judgment obtained in New York would be enforceable against MoFo. Lastly, for the reasons previously explained, a trial in New York would be easier, more expeditious, and less expensive. The private interest factors weigh in favor of dismissal.

Public Interest Factors. As to the first public interest factor, imposing any administrative difficulties on the Texas judicial system is unwarranted given that the facts underlying this lawsuit occurred in New York. Courts in New York, where MoFo performed most of its work, should bear any administrative difficulties caused by this case.

As to the second factor, the burden of jury duty should not be borne by Austin residents, who have no interest in the resolution of this case. As illustrated, the allegedly negligent work and wrongful conduct occurred almost exclusively in New York, where the attorney-client relationship

was also entered. Ex. 1 ¶¶ 12–14. "It is fundamentally unfair to burden the people of Texas with the cost of providing courts to hear cases," like this one, "that have no significant connection with the State." *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 676.

As to the third factor, the community of Austin has no localized interest in this case. The MoFo attorneys involved are not licensed in Texas, Ex. 1 ¶ 14, and the allegedly injured Plaintiffs are not Texas residents, Ex. 2 ¶¶ 2–3 & Exs. N–V.

Lastly, it is unlikely that Texas law will govern this case. The alleged injury occurred in New York, based upon alleged actions performed largely by New York-licensed attorneys in MoFo's New York office, in connection with an attorney-client relationship formed in New York. New York law will likely apply. *See Hughes Wood Prods., Inc. v. Wagner*, 18 S.W.3d 202, 205 n.1 (Tex. 2000) (citing Restatement (Second) of Conflict of Laws § 145(2) (1971)).

All of the forum non conveniens factors weigh in favor of dismissal of this action.

C. Plaintiffs' choice of forum is entitled to little deference.

Because Plaintiffs are not legal residents of Texas, their choice of forum is entitled to "substantially less deference." *Quixtar Inc.*, 315 S.W.3d at 33. As stated earlier, none of Plaintiffs are registered with the Texas Secretary of State or Texas Comptroller, or have a registered agent in Texas. Ex. 2 ¶¶ 2–3 & Exs. N–V. All five Plaintiffs are incorporated in Delaware, Pet. at 4, and four apparently have their principal places of business in New York, Ex. 2 ¶ 4 & Exs. W–AA. Even under the broadest of interpretations of a corporation's residence, the corporation is deemed to reside where it is incorporated and where it has its principal place of business. *Reddy Ice Corp. v. Travelers Lloyds Ins. Co.*, 145 S.W.3d 337, 342 (Tex. App.—Houston [14th Dist] 2004, pet. denied).

III. CONCLUSION

The Court should prevent the imposition of an inconvenient jurisdiction on a defendant. *Gottwald*, 2018 WL 3407719, at *3. Because the *Gulf Oil* factors show that this action should be resolved in New York, MoFo respectfully requests, subject to and without waiving its special appearance, that this Court decline to exercise jurisdiction over this action under the doctrine of forum non conveniens and dismiss all of Plaintiffs' claims.

Dated: March 29, 2019

Respectfully Submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF CONFERENCE

On March 29, 2019, I communicated via phone with Peter K. Taaffe, counsel for Plaintiffs in this matter. Mr. Taaffe indicated that Plaintiffs oppose the relief requested by this motion.

/s/ Thomas E. O'Brien
Thomas E. O'Brien

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2019, this document was served pursuant to the Texas Rules of Civil Procedure on the counsel identified below:

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